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C. The Judicial Yuan

692
642 The functions of the Judicial Yuan according to the Constitution[18] are: (a) the interpretation of the Constitution and other laws and decrees; (b) the adjudication of administrative suits and disciplinary punishment of public functionaries. In other countries the last-named functions -- jurisdiction over administrative cases and disciplinary actions against government employees -- normally fall within the authority of the administration.

The President and Vice-President of the Judicial Yuan are nominated and appointed by the President of the Republic with the consent of the Control Yuan. They with a number of Grand Justices form the Council of Grand Justices.[19] The Council of Grand Justices is charged with the power and responsibility of interpreting the Constitution. It is also concerned with the interpretation of laws and ordinances with a view to adjusting

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18. Constitution 1947, Articles 77 and 78.

19. According to Article 3 of the Organic Law of the Judicial Yuan, the Council of Grand Justice is to be composed of seventeen judges of high standing. Twelve of them were appointed in 1948 but only two accompanied the National Government to Formosa. Seven new justices were appointed in 1952.

692 642 differences and bringing about their uniform application. The tenure of office of a Grand Justice is nine years.

692 Under the Judicial Yuan there are the Supreme Court, the Administrative Court, and the Committee on the Discipline of Public Functionaries. The judicial system in China is based upon the principle of three trials in three grades of courts -- the District Court, the High Court, and the Supreme Court. The Supreme Court is the highest tribunal of the land. It consists of a number of civil and criminal divisions,[20] each of which is formed by a presiding judge and four associate judges. The judges are appointed for life, and they are above party affiliations.[21]

The Administrative Court is concerned with legal procedings against government agencies. Any individual who is convined that his proper rights or interests have been injured by an unlawful decision or act of a government agency, and who has failed to receive satisfactory redress from the superior

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20. Before the removal to Formosa it had thirteen civil divisions and fourteen criminal divisions. At present it maintains three civil divisions and two criminal divisions.

21. Constitution, 1947, Articles 80 and 81.

• 692 authorities on first and second complaints, may bring the matter to the Administrative Court. The Court, like the Supreme Court, is headed by a President, and consists of several divisions,[22] Each division has a presiding judge and four associate judges. In 1954 there were ninety-six administrative suits, out of which seventy-eight cases were settled. Many of the suits brought before the Administrative Court in that year arose from the implementation of Land Reform initiated in 1953. Others were related to wine and tobacco monopolies, requisition of dwellings for public use, and the consfication of smuggled goods by the Customs. In all cases the decision was against the government.

The Committee on the Discipline of Public Functionaries is composed of a chairman and nine to fifteen members, whose duty is to mete out proper punishment to government officials who have been either impeached by the Control Yuan or referred to the Committee by the competent superior authority. The disciplinary punishment may be suspension or dismissal from office, demotion, reduction of salary, or a warning. Where a criminal law is involved, the case is turned over to a criminal

22. Two to three divisions, Organic Law of Administrative Court 1948, Article 3.

• 692 court. In 1954 there were fifty-one cases involving seventy-two officials of different ranks brought before the committee.

The District Court and the High Court are under the direct supervision of the Ministry of Justice of the Executive Yuan. The judges and procurators are appointed by the Minister of Justice. In principle, each hsien should have a District Court and each province a High Court. In practice, several hsien may share a District Court if their area is small. In provinces, where the area is extensive and the population large, there may be one or more branches of the High Court. Both the District Court and the High Court are under the direction of a President, and the judges are divided into civil and criminal divisions. The district court handles all civil and criminal cases of the first instances; the High Court, both hears appeals against decisions of the District Courts and takes under advisement cases of the first instance of insurrection, treason, conspiracy with a foreign power against the Government, and actions detrimental to the foreign relations of the country.[23] The Supreme Court, which is a part of the Judicial Yuan, is the court of last resort.

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23. Organic Law Governing the Law Courts, 1932, Article 17.

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•692 On Formosa a High Court sits in Taipei, a branch High Court in Tainan, and twelve District Courts in the cities of Taipei, Taichung, Tainan, Hsinchu, Chiayi, Kaohsiung, Pingtung, Taitung, Penghu, Yilan, Hualien, and Keelung. There is a Juvenile Court in Hsinchu.

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## COURT CASES IN 1954*

| | Pending and New Cases | Settled in 1954 | Pending at End of Year | Pendency# |
|---|---|---|---|---|
| District Courts | | | | |
| Civil | 81,578 | 77,111 | 4,476 | 50 1/2 days |
| Criminal | 48,555 | 46,947 | 1,578 | 29 1/2 days |
| High Courts | | | | |
| Civil | 7,649 | 6,341 | 1,308 | 67 1/2 days |
| Criminal | 11,089 | 9,674 | 1,415 | 52 days |

* Source: Report of the Ministry of Justice to the Editors' Committee of China Handbook 1955-56, which is going to press.

# Average number of days required for settlement.

693 is not less than one year of imprisonment or
695 in cases where a higher court takes jurisdiction as a court of first trial. The public defender system had been in use for some years on the Mainland; and was introduced in Formosa on June 1, 1950.

695 D. Trial and Appeal. Most criminal cases may
697 go through as many as three courts -- the district court, the high court, and the supreme court. The district court handles the first trial of all criminal cases except those for which special provisions have been made by law. The organic law governing courts provides that the high court be given jurisdiction over the first trial for offenses against the internal and external security of the state and offenses against the property or persons of a friendly foreign state.[5]

695 In cases involving the trivial offenses enumerated in Article 61 of the Criminal Code, the court of first trial may, upon application by the procurator, order the sentencing of the offender without observing the usual trial procedure, if the accused has confessed during the preliminary investigation or other evidence sufficient for conviction has been offered the court. Such a sentence is limited to a fine, detention, or not more than six months' imprisonment.[6]

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5. Article 10, Organic Laws Governing Court, 1932, and Article 4, Code of Criminal Procedure, 1935.

6. Article 442, Code of Criminal Procedure, 1935.